IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF VIRGINIA CHARLOTTESVILLE DIVISION	
ELIZABETH SINES, et al., Plaintiffs, vs. JASON KESSLER, et al., Defendants.)) Civil Case No. 3:17-CV-00072)))))
TRANSCRIPT OF TELEPHONIC HEARING HONORABLE MAGISTRATE JUDGE JOEL C. HOPPE PRESIDING FRIDAY, APRIL 26, 2019, 2:04 P.M.	

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Proceedings recorded by FTR and transcribed using Computer-Aided Transcription

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1 (Court convened at 2:04 p.m.) 2 THE COURT: Hi. This is Joel Hoppe. Who is on the 3 line for the plaintiffs? 4 MR. BLOCH: Judge, this is Michael Bloch from Kaplan 5 Hecker & Fink for the plaintiffs. 6 MR. LEVINE: And Alan Levine from Cooley for the 7 plaintiffs, Your Honor. 8 MS. PHILLIPS: Jessica Phillips from Boies Schiller 9 Flexner is also on for the plaintiffs, Your Honor. 10 MS. KAPLAN: And I'm here, Roberta Kaplan, Your Honor, also from Kaplan Hecker & Fink. 11 12 THE COURT: All right. Good afternoon. 13 And then who is on the line for Mr. Schoep? MR. ReBROOK: This is Edward ReBrook, Your Honor. 14 15 THE COURT: All right. Good afternoon. 16 And is anyone else on the line? 17 MR. SCHOEP: This is Jeff Schoep. I'm here as well. 18 THE COURT: All right. Well, counsel, thank you for 19 calling in. This hearing is on the plaintiffs' motion for 20 sanctions against Mr. Schoep. And the hearing is being 21 recorded by the court's FTR system, so there is a record of 22 this hearing. 23 Counsel, I have reviewed the plaintiffs' motion, and 24 then there were some e-mails that were forwarded to the Court 25 in the last couple of days that I have reviewed as well.

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1 Mr. Bloch, or whoever is going to speak on behalf of 2 the plaintiffs, what remains at issue in this motion? 3 MR. BLOCH: Judge, in terms of the actual devices and accounts still outstanding? 4 5 THE COURT: Yes. 6 MR. BLOCH: So the -- in terms of accounts 7 outstanding and devices, Mr. Schoep still withholds a laptop, 8 credentials to all e-mail addresses that he used to 9 communicate about the events, as well as a number of social 10 media accounts. 11 So to date we, in short, we don't have any documents 12 from any electronic device, we don't have any documents from 13 any e-mail accounts. The only electronic device that has been, I guess, produced in some sense was the cell phone that 14 15 was produced to the vendor; although, that was reported to 16 have fallen in the toilet and there are no documents 17 recoverable. 18 So the only -- the only, I guess, social media 19 account that has been produced at all is credentials to a 20 single VK account, which has some documents. But, 21 essentially, there are -- the rest of what Mr. Schoep 22 identified as devices and accounts that he used to communicate 23 about the events are all still outstanding. 24 THE COURT: All right. And there's the Twitter 25 account but with, perhaps, a questionable e-mail address; is

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1 that right? 2 MR. BLOCH: That's right. There is a Twitter account 3 which was disabled. It's our understanding that the defendants are able to recover documents from disabled Twitter 4 5 accounts. I don't believe that process has been undertaken by Mr. Schoep. But there was a -- there was a Twitter account 6 7 which we do know the e-mail address associated with. 8 THE COURT: And is that something that the 9 third-party --10 MR. BLOCH: [Inaudible.] 11 THE COURT: I'm sorry. Is that something that the 12 third-party vendor is able to access and recover documents 13 from? 14 MR. BLOCH: It doesn't appear so, Judge. We tried 15 to -- we asked the vendor to try to do that, and we thought we 16 had gotten a method from Twitter that we proposed to the 17 vendor. It's my understanding that the vendor now needs some 18 sort of specific permission or effort from the defendants to 19 actually get into disabled accounts. 20 THE COURT: All right. And as to the specific e-mail addresses that you're seeking credentials to, is that the Jeff 21 22 Schoep Gmail account and the commander@newsaxon.org? 23 MR. BLOCH: I believe that's right, Judge. Let me just -- let me just double-check the second one. Right, it's 24 25 commander@newsaxon.org, as well as jeffschoep@gmail.com.

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1 commander account, Judge, I would just note was identified by 2 Mr. Schoep in his interrogatory responses as containing 3 responsive documents. THE COURT: All right. And then as to the social 4 5 media accounts, which ones are you seeking there? 6 So we haven't gotten any production from MR. BLOCH: 7 any social media account other than the VK account. What 8 remains outstanding is the web -- is all websites, nsm88.org, 9 nsmradio.org, nsmmedia.org, nsm88records.com, as well as a Bitchute account NSM Media, Twitter account @nsm88, @nsmmedia, 10 11 as well as a YouTube account identified in Mr. Schoep's 12 interrogatory responses. 13 THE COURT: All right. 14 MR. BLOCH: I would note, Judge, we have undertaken 15 to try to recover some -- what we can find on websites that is 16 public; although, particularly the main NSM88 account is --17 has a massive amount of content. It's difficult to navigate. 18 It's difficult for us to recover -- to sort of figure out and 19 recover all of what appears to be posted there. Although, we 20 have tried to recover what we can find as responsive. 21 THE COURT: But what you're looking for, for those 22 things, are credentials, or are you also looking for Mr. Schoep to produce particular documents? 23 24 MR. BLOCH: Well, I think what we believe he ought to 25 do is to go through those websites himself and flag what he

1 believes to be responsive, which he could do either I believe 2 himself or I think through some process with the vendor, which 3 would require credentials. THE COURT: Okay. All right. 4 5 All right. Mr. ReBrook, as to those, those items, I've seen your e-mail response to Mr. Bloch, but what else 6 7 would you -- what else would you say about them? 8 MR. ReBROOK: I think I've been pretty thorough in 9 the e-mail response, Your Honor. It's just that a lot of the 10 items he specifically just mentioned, like the Bitchute 11 account, we don't know what that is. 12 THE COURT: Mr. ReBrook, let me stop you there, 13 because your client, under oath, identified it in 14 interrogatories. How can you say that you don't even know 15 what they are? 16 MR. ReBROOK: I'm just telling you what they've told 17 me, Your Honor. THE COURT: In April of 2018, your client, under 18 19 oath, identified the Bitchute account. What is the 20 explanation -- what is the explanation for a year later in 21 saying he doesn't even know what that is? 22 MR. SCHOEP: If I can answer that, Your Honor, I'll 23 be happy to. I think the Bitchute has something to do with 24 videos. I don't know --25 THE COURT: Make sure that you identify --

1 MR. SCHOEP: -- [inaudible] there or how that works, 2 but I think it has something to do with videos. But it's not 3 something that I've ever personally had access to or -- I don't know -- I don't even know if you can send messages to 4 5 there. But I believe it has something to do with videos, like a YouTube type of channel or something. 6 7 THE COURT: All right. And that's Mr. -- Mr. Schoep, 8 is that you? 9 MR. SCHOEP: Yes. THE COURT: Now, do you --10 11 MR. BLOCH: Judge, if I may, that was one of the accounts specifically identified in the interrogatory 12 13 This is Mike Bloch. responses. THE COURT: All right. I know it was. 14 15 So, Mr. ReBrook, where are the credentials for that 16 account and when are you going to provide them to the 17 plaintiffs? 18 MR. ReBROOK: Your Honor, I don't have those 19 credentials, neither does Mr. Schoep. I acknowledge that 20 there is this thing called Bitchute that may exist, but my client has never had custodianship of this account. 21 22 THE COURT: All right. Well, in his response to 23 Interrogatory Number 1, it says, "Identify all means of 24 communication used by you to communicate about the events," 25 and one of the things he identifies is Bitchute.

1 I mean, if he was using it to communicate, how can 2 you -- and he says that under oath, how can you tell me now he 3 doesn't have the ability to access that? MR. SCHOEP: Your Honor, this is Jeff Schoep again. 4 5 I don't recall saying that I ever had access to Bitchute, because it's not something that I've ever used to communicate 6 7 with anybody. So, I mean, I do understand that it has 8 something to do with videos or something like that, and 9 someone, you know, within NSM may have uploaded videos to that 10 or something of that nature, but I personally do not have 11 access to that. I've never sent anybody a message through 12 Bitchute. I'm not even sure that you can send messages 13 through Bitchute. So I'm not, you know, aware of that. 14 THE COURT: All right. So, you know, Mr. ReBrook, I 15 do -- Mr. Schoep, I appreciate your participation in this, 16 but, you know, I think it's appropriate for Mr. ReBrook to be 17 the one who is responding to my requests. 18 And, Mr. ReBrook, you may want to talk to Mr. Schoep 19 about that. 20 But, you know, my concern here is that Mr. Schoep, 21 under oath, has identified Bitchute as something -- a Bitchute 22 account that he used to communicate. And, Mr. ReBrook, your 23 latest -- you know, a year after that, your statement that he 24 doesn't have access or he doesn't even know what Bitchute is, 25 is -- you know, just contradicts with his sworn statement.

1 MR. ReBROOK: [Inaudible], Your Honor. 2 THE COURT: Could anyone who is not actively talking, 3 can you put your phone on mute, perhaps? I'm getting some really strange sounds. 4 5 MS. KAPLAN: It sounds like a baby, Your Honor. 6 THE COURT: It does. I can tell you there are no 7 babies -- there are no babies --8 MR. ReBROOK: Your Honor, it is a baby. I apologize. 9 THE COURT: Okay. All right. 10 MR. ReBROOK: I'm on baby duty. 11 THE COURT: All right. In any event, 12 that's something that, Mr. ReBrook and Mr. Schoep, that I'm 13 going to order, you know, within seven days that you all provide, provide the credentials to the Bitchute account. 14 15 if for some reason, you know, you're contending that you don't 16 have that, then I want you to make that statement to the 17 Court, and it needs to be a signed statement. 18 MR. ReBROOK: Understood, Your Honor. 19 THE COURT: Now, there are, of course, other items to 20 address here; one is the laptop. And, Mr. ReBrook, what's 21 your response? 22 MR. ReBROOK: The laptop that they're asking for contains a great deal of privileged communication between 23 24 myself and Mr. Schoep, as well as his previous attorneys. 25 We're arguing that that's protected by privilege. I also was

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just trying to get some sort of -- some sort of bracket on the limit of the discovery that plaintiffs are asking for. not under the belief that suing someone gave a person carte blanche right to anything and everything they have ever produced or owned, that their Fourth Amendment protections are still in place. But [inaudible] --THE COURT: I'm not sure -- I'm not sure how the --I'm not sure how the Fourth Amendment factors in in here, but certainly not -- can we not -- the plaintiffs aren't asking for everything that he has ever produced. And how this whole -- the stipulation and to use a third-party vendor came about is that, you know, the plaintiffs made requests for relevant information and it was, you know, nine months later or ten months later and nothing had been produced, and defendants were arguing that it was overly burdensome and too expensive to make the production and that they couldn't do it themselves. So there was a new method that we've employed to, really, to assist both parties in this production, and how it is designed to come about is that the defendants need to identify devices that contain relevant information, the third-party vendor will extract that information, and then the defendants have to review the information. Before it goes to the plaintiff, the defendant reviews the information for responsiveness and privilege and turns over that information,

1 so if there are privileged documents on there, that is no 2 objection to withholding the entire device. 3 MR. ReBROOK: Okay. I didn't understand that, Your Honor. Also, Mr. Bloch had told me that due to this being a 4 5 conspiracy suit, that items before the announcement of the rally and after it already ended were relevant. Well, before 6 7 and after equals all of recorded time. So is there no sort of -- or am I -- after the vendor goes through this stuff, am 8 9 I supposed to determine what, what is relevant on my own, or is there actually a time frame of communications which this 10 lawsuit applies to? 11 12 THE COURT: I think reading the complaint and the 13 defenses raised, that's the -- it sets the parameters for relevance, so I think that's where you would have to start. 14 15 But, you know, that's a process that you all are going to have to go through after the third-party vendor extracts the 16 17 information and you review it. And, you know, there -- I 18 think there's -- it's a discussion that you need to have with 19 plaintiffs' counsel about search terms and things like that, 20 and, you know, to try and produce what is relevant. 21 Of course, it's not just, you know, the few days of 22 the events in Charlottesville. Relevant information is going 23 to come from before and after, and there are going to be 24 discussions that occurred before and after that are relevant

to those days. There's going to be information not just

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1 during those few days in Charlottesville that are relevant. 2 MR. ReBROOK: Very well, Your Honor. 3 There were some other areas we had concern with, but I will address them when you ask me to. 4 5 THE COURT: Okay. And, Mr. ReBrook, on the laptop, 6 you know, I'm sensitive to Mr. Schoep being -- needing to have 7 the laptop, but I think that's something that you can work out 8 with the third-party vendor to, you know, get it to the vendor 9 in, you know, in a very -- it's going to need to happen soon. But hopefully the vendor won't need to keep it for very long 10 11 before -- so that it can create an image and get the laptop back to Mr. Schoep. 12 13 Do you all -- Mr. Bloch, do you know -- do you know how long that might -- that might take? 14 15 MR. BLOCH: Well, my understanding is that even if 16 the defendants are -- if they -- if they go through this 17 process by sending their laptop, that they get it back within 18 a day or two. It's also been my understanding that the vendor 19 has accommodated other defendants by sending someone out to them and doing some sort of home collection. So I think the 20 inconvenience is minimal, to say the least. 21 22 I would also note that it was in February, when 23 Mr. Schoep was represented by Mr. Kolenich, that Mr. Kolenich 24 represented that all of his clients were sort of squared away 25 with Faraday bags and ready to send their devices in. So it

1 just feels to me that -- to hear that he can't produce because 2 it's inconvenient two months after the fact these things --3 two months after these things have been ordered produced is sort of specious at this point. But in answer to your 4 5 question, the inconvenience I think is minimal. 6 MR. SCHOEP: Your Honor, if I might. This is Jeff 7 Schoep. I'm sorry. 8 THE COURT: Mr. Schoep --9 MR. SCHOEP: [Inaudible]. THE COURT: -- you may -- I would encourage you to 10 talk to Mr. ReBrook and have him speak for you. 11 12 MR. SCHOEP: Okay. 13 THE COURT: But, you know, any inconvenience can -is going to be minimal, and it can be accommodated, and I 14 15 think that is something that has been discussed on previous 16 calls, so it certainly isn't a reason to delay providing the 17 laptop, and it hasn't been for the last, you know, number of 18 months. 19 All right. Mr. ReBrook, as to the credentials for 20 the e-mail addresses, and this is the jeffschoep@gmail and the 21 commander@new -- newsaxon, is Mr. Schoep prepared to provide the disc? 22 23 MR. ReBROOK: I believe he can, Your Honor. Well, 24 the New Saxon, I'm not sure about that one that -- the Gmail 25 one I believe he can. I'm going through the list right now.

1 THE COURT: Well, the New Saxon one was identified in 2 Interrogatory 4 as one that he used, so I expect that he will 3 provide that. MR. ReBROOK: Okay. We will address that, Your 4 5 Honor. 6 THE COURT: All right. 7 MR. ReBROOK: If I may, Your Honor, we do have an 8 objection to nsm88records.com, turning that over, as, firstly, 9 it's owned by an entity which is not a named defendant in this case, but also, we're just talking about purchase order 10 information from people. And we have -- we have concerns that 11 a lot of this lawsuit in general, but particularly this 12 13 request, that its actual purpose is to elicit information of the overall membership of the NSM, anyone that may have 14 15 donated to the NSM, anyone that's ever bought a T-shirt off of 16 this website, or whatever they sell, and that the purpose is 17 to dox these people. 18 I don't know -- no communications were done through 19 NSM88records.com. It's merely a purchase T-shirts and 20 stickers and whatever else they sell kind of website, so I 21 don't see how that could possibly be relevant to this case. 22 MR. BLOCH: Judge, if I may, the -- as -- this is 23 Mr. Bloch. As you're aware, there's a protective order in 24 There's no evidence that any lawyer from this side has place. 25 violated it, intends to violate it. That's absolutely not our

1 purpose. 2 The argument that -- which I think sort of runs 3 through a number of these accounts and devices, that Mr. Schoep doesn't have to produce because he doesn't own it, 4 5 I think is totally belied by the case law which says that if he has actual possession or a legal right to access these 6 7 documents, that he's got to produce -- he's got to produce it. 8 Obviously, what we are asking for is responsive 9 content to our discovery requests. And there's absolutely no evidence that anybody intends to violate the protective order 10 11 in this case. 12 THE COURT: And, Mr. Bloch, just practically speaking 13 for -- and for this particular, I quess, website, the NSM88 Records, are you -- are you asking for the third-party vendor 14 15 to be involved in that, or is this something that you're 16 asking Mr. Schoep and Mr. ReBrook would identify particular 17 documents or produce particular documents from that website? 18 MR. BLOCH: Well, what we've been doing is, you know, 19 they provide credentials and then the vendor images everything 20 that exists, sends everything back to the defendants for their review, you know, for, I guess, privilege. Although, it's 21 22 hard to imagine that would apply to the website. I don't see 23 any reason why that process shouldn't apply to the websites as 24 well.

THE COURT: And I'm just -- you know, it's different

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than, you know, than a social media account where there's a, you know, a login. But for the website, you know, what -- I guess what credentials are you expecting for that? Is there a login --MR. BLOCH: Yeah, Judge, the -- so I think that's a I know, for example, the Bitchute account fair question. appears to have a login. It appeared to us that we were not able to access the entirety of the website ourself. In terms of NSM88, the -- I think the bigger issue for us is it's just a massive amount of content and it -- you know, there are -- it's not clear to us whether there are parts of the website that we don't have access to. The -- which is why I think the sort of cleanest process would be for the vendor to image everything that is either public, or if it's not private -- I mean, if it's private, to get credentials from Mr. Schoep. But as I mentioned, we are also ourselves trying to get what we can find as responsive content from that particular website. THE COURT: All right. And so for the websites, it's -- essentially, what you're asking for is if there is a login for one of the websites, for Mr. Schoep to provide credentials, you know, if he has them for the website. the vendor can access the website on its own; it would just need the credentials to possibly access any, you know, any 25 nonpublic information before it could search the --

1 MR. BLOCH: Yes, I think that's absolutely right, 2 Judge. 3 THE COURT: But if there are no credentials, then the 4 vendor or anyone, you all could go ahead and search the --5 search the website on your own if it's all public? 6 MR. BLOCH: Yes, I agree with that, Judge. Right. 7 THE COURT: Okay. 8 MR. BLOCH: Agreed. Like I said, I think that's -- I 9 think that may be true for NSM88 but not for some of the other 10 ones. 11 THE COURT: All right. 12 MR. ReBROOK: NSM88 Records, again, it's a 13 merchandise store. You can look up everything that's on it directly on the website. But what people are buying off of it 14 15 is protected by the Preservation of Personal Privacy Act. Nor 16 do I imagine that a person buying a T-shirt, sticker, 17 necklace, whatever, has any relevance to a conspiracy in 18 Charlottesville. 19 MR. BLOCH: Judge, we're not seeking to know what 20 people are purchasing off the website. We want content that's 21 posted that's responsive to the events in this case. 22 MR. ReBROOK: That's all on -- available to your 23 access through your ISA [phonetic]. 24 THE COURT: Well, and that really is something that 25 can be addressed, you know, in a later step through the

1 third-party vendor. And if there's anything that is public, 2 you know, the plaintiffs can access that and search it on 3 their own. If there's anything that requires a login and that there's private information, if it's not responsive and not 4 5 relevant, then that does not need to be turned over in discovery. 6 7 You know, there are separate issues about whether the 8 vendor is going to -- is going to, you know, secure the 9 information for view by the defendants and their counsel. That's separate from what's actually going to necessarily be 10 11 produced by the defendants. And, you know, I think we all 12 anticipate that it's going to be a larger amount of 13 information that the vendor would secure than what the defendants actually end up producing as, you know, relevant, 14 15 relevant information. 16 You know, Mr. Bloch, I don't think that getting, 17 especially people are ordering things off the Internet, that, 18 you know, getting information about their orders, and I think 19 there is a concern about, you know, about people's credit card 20 numbers and things like that. I mean, that has no role in 21 this litigation for sure. 22 MR. BLOCH: Judge, we agree with that. 23 THE COURT: And I didn't think that that was 24 something that you all were interested in. 25 MR. BLOCH: Right.

1 THE COURT: So, Mr. ReBrook, Mr. ReBrook, do you 2 understand that the scope of what the plaintiffs are asking 3 for, for these websites, that it's really if there are credentials that Mr. Schoep has for logging in to, you know, 4 5 nonpublic parts of these websites, that that is what is being sought? 6 7 MR. ReBROOK: Yes, Your Honor. 8 THE COURT: All right. Well, I'm going to order that 9 that also -- that information be provided to the plaintiffs 10 within seven days. And then I think the final item is the disabled 11 12 Twitter account that the plaintiffs -- the vendor just needs 13 permission from Mr. Schoep to be able to access it. Mr. ReBrook, what is the -- your position on that? 14 15 MR. ReBROOK: If we have that, we'll give them 16 permission, Your Honor. 17 THE COURT: All right. And I'll put that in the 18 order. 19 MR. ReBROOK: I've been told that -- I'm sorry, I 20 didn't mean to interrupt, Your Honor. 21 THE COURT: Go ahead. 22 MR. ReBROOK: What I have been most recently told is 23 that Mr. Schoep was never the custodian of the Twitter 24 account. But as far as our permission for you to have it, I 25 mean, go at it. Being that he wasn't the custodian, I don't

1 know what we could do for you. 2 THE COURT: But, again -- and I'm going to order that 3 you provide it, because he's -- you know, in his interrogatories, he's identified the Twitter account, the 4 5 NSM88 account that's suspended, as an account that he used to communicate concerning the events. That tells me that he has 6 7 control over it. So that is a sworn statement and I'm not letting you walk that back. 8 9 So that is going to be part of the order that -- that Mr. Schoep needs to provide the vendor permission to access 10 11 that account. And that's also going to be -- he's going to have to do that in seven days too. I don't know exactly what 12 13 sort of permission is required, but that's something that you can work with the vendor about and find out what it needs and 14 15 you can provide it to them. 16 MR. ReBROOK: Understood, Your Honor. 17 THE COURT: All right. Mr. Bloch, are there any 18 other particular items that the plaintiffs are seeking that we 19 haven't addressed? 20 MR. BLOCH: I don't believe so, Judge. Although, I wasn't sure what the final resolution was on the issue of the 21 22 laptop. 23 THE COURT: I think the laptop will need to be 24 provided in seven days as well. And that's something that I 25 think Mr. ReBrook, of course, can work with the vendor on to

1 figure out the least disruptive way to get that to the vendor 2 and then get it back to Mr. Schoep. 3 MR. BLOCH: Judge, yeah, so in terms of items 4 outstanding, I think that covers it. I think it only -- I 5 think that covers it. 6 THE COURT: Okay. Mr. Bloch, are you seeking 7 anything additional through this, through this motion? I know 8 there have been -- there have been requests for attorney's 9 fees. 10 MR. BLOCH: Judge, I think -- I think we would put that request on hold at this point and wait and see what we 11 12 get from the defendants in the next seven days. 13 THE COURT: I think that's appropriate, so I will take the request for attorney's fees under advisement. 14 you know, I'll just say it's -- you know, I don't award 15 16 attorney's fees often in discovery disputes, but I do view them as a way to compel compliance with the Court's order, and 17 18 it's -- and there certainly is a need in this case to make 19 sure that folks are complying with their discovery obligations 20 and the Court's order, so there are sanctions of attorney's 21 fees, and other means are certainly on the table. 22 MR. BLOCH: I appreciate that, Judge. 23 THE COURT: All right. Mr. ReBrook, is there 24 anything else that we need to address today? 25 MR. ReBROOK: I do not think so, Your Honor.

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            THE COURT: All right. Well, counsel,
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   thank you for calling in, and we'll get an order out if not
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   today then certainly Monday on -- on this, okay?
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            MR. BLOCH: Thank you, Your Honor.
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            THE COURT: All right. Thank you. Have a good
 6
   weekend.
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            MR. ReBROOK: Thank you, Judge.
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            UNIDENTIFIED PERSON: Thank you, Your Honor.
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            UNIDENTIFIED PERSON: You too.
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            THE COURT: All right. Bye.
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        (Court recessed at 2:40 p.m.)
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13
                            CERTIFICATE
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   I, Judy K. Webb, certify that the foregoing is a
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   correct transcript from the record of proceedings in
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   the above-entitled matter.
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   /s/ Judy K. Webb
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